In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-440

ERNEST MALIZIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a three day jury trial in the United States District Court for the Southern District of New York, petitioner was convicted of selling cocaine, in violation of 21 U.S.C. (1964 ed.) 173 and 174. He was sentenced to ten years' imprisonment and fined $20,000. The court of appeals affirmed on September 17, 1974 (Pet. App. A). On September 22, 1974, petitioner escaped from custody, and he is presently at large. The petition for a writ of certiorari was filed on October 17, 1974, subsequent to the escape. By his unlawful escape petitioner disentitled himself "to call upon the resources of the Court for determination of his claims." *Molinaro* v. *New Jersey*, 396 U.S. 365, 366.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JANUARY 1975.